IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14730 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMARSINH SHANAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14730 of 2003

MR DC DAVE for Petitioner No. 1-5

MR NAGESH SOOD, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 1

MR RM CHHAYA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/08/2004

ORAL JUDGEMENT

Rule. Shri Rashmin Chhaya, Learned Advocate

waives service of rule on behalf of the respondent no.2. Shri Sud, Ld. AGP waives service of rule on behalf of the respondent no.1. With the consent of the parties, the matter is taken up for final hearing today.

2. The petitioner was the owner of the land bearing S.No.167/5 admeasuring 4047 sq.mtrs. of land situated at Village Nikol, Ahmedabad. On Town Planning Scheme being introduced, the same was given Original Plot No.21 and new Original S.No.167/5 i.e. O.P.No.21 is given F.P.No.194 which is reserved for the purpose of garden in lieu of Original S.No.167/5 O.P.No.21, the petitioner is allotted F.P.No.12 admeasuring 2906 sq.mtrs of land. It is he case of the petitioner that the Town Planning Scheme has become final on 17.8.1998 still the petitioner is not handed over the peaceful and vacant possession of F.P.No.12 which has been allotted to the petitioner under the Town Planning Scheme which has become final and the respondents are insisting for taking possession of O.S.No.167/5 O.P.No.21 now F.P.No.194. Therefore, the present Special Civil Application is filed for an appropriate writ, direction and order directing the respondents to perform their statutory duty case under the Gujarat Town Planning & Urban Development Act and to hand over the peaceful and vacant possession of F.P.No.12 of Nikol after removing unauthorized constructions therefrom.

3. In response to the notice issued by this Court, Shri R.M.Chhaya appears on behalf of the respondent no.2. Though no counter is filed, but he has submitted that in view of the fact that there is unauthorized construction in F.P.No.12, the peaceful and vacant possession of F.P.No.12 is not given to the petitioner. However, he has submitted that the petitioner is required to hand over peaceful and vacant possession of O.S.No.167/5 O.P. No.21 now F.P.No.194 to the Corporation. It is further submitted that the insistence on the part of the petitioner to first hand over the possession of F.P.No.12 is not well founded. He has submitted that in fact, the petitioner is required to hand over the possession of F.P.No.194 to the Municipal Corporation. To that, Shri D.C.Dave, Learned Advocate for the petitioner has submitted that he has no objection whatsoever in handing over the peaceful and vacant possession of O.S.No.167/5 O.P.No.21 now F.P.No.194 to the Municipal Corporation. However, it is bounden and corresponding duty on the part of the respondent Corporation to perform statutory duty and hand over the peaceful and vacant possession of the plot which is allotted to the petitioner.

4. As held in the case of The Municipal Corporation for Greater Bombay and another Vs. The Advance Builders (India) Pvt.Ltd. and others reported in AIR 1972 Supreme Court 793 and in the judgment of this Court in SCA No.982 of 1991, the authorities under the Town Planning Act are bound to implement the Town Planning Scheme and hand over the peaceful and vacant possession of the plot which is allotted to the person under the Town Planning Scheme. As held by the Supreme Court in the case of The Municipal Corporation for Great Bombay and another (supra), even the Municipal Corporation is required to remove the unauthorized construction which is there on the land in question. Considering the aforesaid judgment and the facts and circumstances of the case, the respondents, more particularly, respondent no.4 is directed to implement the Town Planning Scheme with regard to the land in question and hand over the peaceful and vacant possession of F.P.No.12 to the petitioner within a period of six months from today. The petitioner is also directed to hand over the peaceful and vacant possession of O.S.No.167/5 O.P.No.21 F.P.No.194 to the Municipal Corporation simultaneously of getting the possession of F.P.No.12 from the Municipal Corporation. If for some reasons, the Municipal Corporation is not in a position to hand over the possession of F.P.No.12 to the petitioner, the respondent no.2 Corporation is directed to pay the compensation at the market price to the petitioner in lieu of allotment of F.P.No.12. Rule is made absolute to the aforesaid extent with no order as to costs. It will be open for the petitioner to challenge the amount of compensation in accordance with law.

(M.R.Shah, J)

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